



STATE OF UTAH

R. PAUL VAN DAM - ATTORNEY GENERAL

1636 WEST NORTH TEMPLE, #300 • SALT LAKE CITY, UTAH 84116 • TELEPHONE: 801-538-7227 • FAX NO.: 801-538-7315

JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

M E M O R A N D U M

DATE: November 26, 1990

TO: Robert L. Morgan, State Engineer
Lee H. Sim, Directing Adjudication Engineer
Robert W. Leake, Northeastern Utah Area Engineer
UTAH DIVISION OF WATER RIGHTS

FROM: Michael M. Quealy, Assistant Attorney General
John H. Mabey, Jr., Assistant Attorney General

RE: Ouray Park Irr. Co. Appeal

Attached for your information is a copy of the Complaint filed by Ouray Park Irr. Co. on November 13, 1990. Please note that the State Engineer's Office has not yet been served. Please let us know when service occurs.

Attachment

JHM/jr

RECEIVED

NOV 26 1990

ATTORNEY GENERAL
NATURAL RESOURCE AGENCIES

FILED
DISTRICT COURT
UINTAH COUNTY, UTAH

NOV 13 1990

GAYLE F. McKEACHNIE - 2200
CRAIG M. BUNNELL - 5449
McKEACHNIE, ALLRED & BUNNELL
Attorneys for Plaintiff
363 East Main Street
Vernal, Utah 84078
Telephone: (801) 789-4908

PATRICIA SWIM, CLERK
BY BRH DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

OURAY PARK IRRIGATION COMPANY,)

Petitioner/Plaintiff,)

vs.)

ROBERT L. MORGAN, Utah State)
Engineer)

Defendant.)

PETITION AND COMPLAINT
APPEALING AMENDED ORDER

Civil No. 900800266-RR

1. Petitioner-Plaintiff is a non-profit irrigation company with its principal place of business in Uintah County, Utah, which has a mailing address at Randlett, Utah 84063.

2. The Defendant, Robert L. Morgan is the State Engineer for the State of Utah whose mailing address is 1636 West North Temple, Suite 220, Salt Lake City, UT 84116-3156.

3. This Petition and Complaint is brought for the purpose of appealing and obtaining judicial review and revision of an order entitled "Uintah River Storage Schedule Amended Order" dated October 15, 1990, signed by the Defendant. A copy of the order is attached hereto as Exhibit "A".

4. Authorization for this appeal is found in Section 73-3-14

and Section 63-46b-14 Utah Code Annotated 1953 as amended, and Rule R625-6-18 of the Rules of the Utah State Division of Water Rights.

5. While there are other water users on the Whiterocks and Uintah river system, as indicated in the Amended Order, the order does not purport to list all of the diversion rights on the river but only those associated with major storage facilities. The portions of the Amended Order which Petitioner-Plaintiff is requesting be revised and reversed do not affect any other parties who participated in the informal adjudicative proceedings which led to the agency action. Therefore, no other persons or entities have been named as parties in this appeal.

6. Petitioner-Plaintiff, Ouray Park Irrigation Company, has water filings and has submitted proof of appropriation for winter storage of 22,500 acre feet of water. Those applications are identified as 43-3197 (A9670 a7300), 43-3198 (A9670a a9684), 43-3215 (A11930). Those applications have priority dates of February 16, 1933, February 16, 1933 and January 27, 1936 respectively.

7. The Amended Order appealed from herein erroneously limits diversion to storage of the above mentioned water between November 2, and March 31, annually to 15,200 acre feet annually.

8. Petitioner-Plaintiff is entitled to 22,500 acre feet of storage water and the note inserted in the Amended Order stating storage is limited to 15,200 acre feet of water will cause

confusion at a future time and should be deleted from the Amended Order.

9. The Amended Order further authorizes the diversion of 10,000 acre feet of water from the Uintah river between January 1, and December 31, under application 43-3198 (A9670a, A9684) but attaches a priority date of July 28, 1977. The priority date of July 28, 1977 is in error. It should be a priority date of February 16, 1933 the date of the filing of the original application.

10. The Defendant erred by limiting the Petitioner-Plaintiff's storage rights to 15,200 acre feet of water in the note inserted in the center of page 2 of the Order.

11. The Defendant erred in attaching a July 28, 1977 priority date to the diversion authorized on the third page of the Order with application 43-3198 (A9670a, A9684).

12. This Court has jurisdiction to review by trial de novo and venue is proper in Uintah County.

WHEREFORE, Petitioner-Plaintiff requests the Court to enter its Order requiring the Defendant to amend the Amended Order of October 15, 1990 to delete the note limiting to 15,200 acre feet Petitioner-Plaintiff's diversion to storage, and Ordering the Defendant to attach a February 16, 1933, priority date in place of the July 28, 1977, for the diversion under application A9670a

referred to on the top of page 3 of the Amended Order, and for such other and further relief as the Court finds appropriate in the matter.

DATED this 13th day of November, 1990.

McKEACHNIE, ALLRED & BUNNELL
Attorneys for Plaintiff

By: Gayle McKeachnie
Gayle G. McKeachnie

By: Craig M. Bunnell
Craig M. Bunnell